MONTANA LEGISLATIVE HISTORY

Chapter 581 19 79

Bill H 181 S _____ Original bill & history ✓ C

H. Committee on Taxation			S. Committee on Taxation		
Hearing Date(s)	Jan 19	✓ C	Hearing Date(s)	Mar 07	✓ C
	Feb 13	✓ C		Mar 12	✓ C
		C			C
		C			C
Date Out	Feb 13	✓ C		Mar 18	✓ C

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Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

CHAPTER NO. 581

HOUSE BILL NO. 181

INTRODUCED BY MARKS

BY REQUEST OF THE CODE COMMISSIONER

IN THE HOUSE

January 16, 1979	Introduced and referred to Committee on Taxation.
February 13, 1979	Committee recommend bill do pass as amended. Report adopted.
February 15, 1979	Printed and placed on members' desks.
February 16, 1979	Second reading, do pass.
February 17, 1979	Considered correctly engrossed.
February 20, 1979	Third reading, passed. Transmitted to second house.

IN THE SENATE

February 21, 1979	Introduced and referred to Committee on Taxation.
March 31, 1979	Statement of Intent adopted.
	Committee recommend bill be concurred in. Report adopted.
April 2, 1979	Second reading, concurred in.
April 4, 1979	Third reading, concurred in.

IN THE HOUSE

April 5, 1979	Returned from second house. Concurred in. Sent to enrolling.
	Reported correctly enrolled.

INTRODUCED BY House BILL NO. 181

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO TAXATION; REPEALING SECTIONS 84-510, 84-6210, R.C.M. 1947, AND SECTIONS 15-23-509, 15-24-401, AND 15-51-105, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-1-105, MCA, is amended to read:

"15-1-105. Fines and forfeitures to county. Except for the forfeiture described in 15-8-706(2), all fines, forfeitures, and penalties incurred by a violation of any of the provisions of ~~this title~~ the state tax laws must be paid into the treasury for the use of the county where the person against whom the recovery is had resides."

Section 2. Section 15-1-401, MCA, is amended to read:

"15-1-401. Payment of license fees under protest -- action to recover. (1) Whenever any license fee or tax is demanded of any person for the use and benefit of the state of Montana and the same is ~~deemed~~ considered unlawful by the person from whom the same is demanded, such person may pay the same, or so much thereof as may be ~~deemed~~ considered unlawful, under written protest, specifying the grounds of protest, to the state agency or officer responsible for collecting the license fee or tax.

(2) The person paying or his legal ~~representatives~~ representative may bring an action in a court of competent jurisdiction against the state agency or officer responsible for collecting the license fee or tax to recover the same, without interest. Any action instituted to recover any license fee or tax paid under protest ~~shall~~ must be commenced and summons and copy of complaint served within 60 days after the date of payment thereof to the state agency or officer responsible for collecting the license fee or tax. If such action ~~be finally~~ is decided adversely to the state, the state treasurer shall, upon receiving a copy of the final judgment in ~~said~~ such action, refund such license fee or tax to the person in whose favor such judgment is rendered."

Section 3. Section 15-6-113, MCA, is amended to read:

"15-6-113. Class twelve property -- description -- taxable percentage. (1) Class twelve property includes:

(a) boats and all watercraft;

(b) aircraft;

(c) motorcycles; and

(d) large farm machinery valued in the ~~official guide~~ tractors Official Guide Tractors and ~~farm implements~~ Farm Equipment and in department valuation schedules.

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(2) Class twelve property is taxed at 11% of its market value."

Section 4. Section 15-6-117, MCA, is amended to read:

"15-6-117. Class sixteen property -- description -- taxable percentage. (1) Class sixteen property includes:

(a) business inventories as defined in this section; and

(b) mobile machines, valued as other heavy construction equipment is valued, used in new industries as defined in class eighteen.

(2) Mobile machines used in new industry are subject to the conditions imposed in class eighteen for other property used in new industries.

(3) "Business inventories" includes goods intended for sale or lease in the ordinary course of business and raw materials and work in progress with respect to such goods. Business inventories ~~shall~~ no not include goods leased or rented or mobile homes held by a dealer or distributor as part of his stock-in-trade.

(4) The market value of business inventories, for property tax purposes, is the cost ~~or present value, whichever is lower,~~ to the person subject to the inventory tax.

(5) Class sixteen property is taxed at 4.2% of market value."

Section 5. Section 15-7-215, MCA, is amended to read:

"15-7-215. Violation a misdemeanor. Any person who violates any provision of this ~~fact~~ part ~~shall be~~ is guilty of a misdemeanor."

Section 6. Section 15-10-203, MCA, is amended to read:

"15-10-203. Increase of tax revenue -- ~~advertising~~ notice of intention required. No taxing authority ~~shall~~ may budget an increased amount of ad valorem tax revenue exclusive of revenue from ad valorem taxation on properties appearing for the first time on the assessment roll unless it ~~advertises~~ gives notice of its intention to do so at the same time and in the same manner that it ~~advertises~~ gives notice of its ~~intention to fix~~ hearing on its preliminary budget for the forthcoming fiscal year."

Section 7. Section 15-10-204, MCA, is amended to read:

"15-10-204. Resolution or ordinance for increase over certified millage. No millage in excess of the department of revenue's certified millage ~~shall~~ may be levied until a resolution or ordinance has been is approved by the governing board of the taxing authority, which resolution or ordinance must be approved by said the taxing authority according to the following procedure:

(1) The taxing authority shall ~~advertise~~ publish notice of its intent to exceed the department's certified millage in ~~a newspaper of general circulation in the county~~

~~as--provided--in--15-10-203~~ the same manner that it gives notice of hearings on its preliminary budget for the forthcoming fiscal year. The ~~advertisement~~ notice ~~shall~~ must state that the taxing authority will meet on a day, at a time and place fixed in the ~~advertisement~~ notice, which ~~shall~~ must be approximately 7 days after the day that the ~~advertisement~~ notice is published, for the purpose of hearing comments regarding the proposed increase and to explain the reasons for the proposed increase. The meeting may coincide with the meeting on the tentative budget as required by law.

(2) After the public hearing has been held in accordance with the above procedures, the taxing authority may adopt a resolution or ordinance levying a millage rate in excess of the certified millage. If the resolution or ordinance adopting ~~said~~ such millage rate is not approved on the day of the public hearing, the day, time, and place at which the resolution or ordinance will be scheduled for consideration and approval by the taxing authority must be announced at the public hearing. If the resolution or ordinance is to be considered at a day and time that is more than 2 weeks from the public hearing, the taxing authority must again ~~advertise~~ publish notice in the same manner as provided in ~~15-10-203~~ and subsection (1) of this section.

~~(3)--Public--notice--given--and--public--hearings--held--in~~

~~compliance--with--the--requirements--of--Title--20,--chapter--9,--part--1,--in--setting--school--budgets--satisfy--the--requirements--contained--in--this--section.~~"

Section 8. Section 15-10-207, MCA, is amended to read:

"15-10-207. Additional millage increase -- ~~readvertising--and--revoting~~ new notice required. If, after the initial ~~millage--vote~~ notice provided for in 15-10-203 the taxing authority determines that it requires a greater millage or fails to act in the specified period, it ~~shall readvertise~~ must give notice anew under 15-10-203 and ~~revote~~ proceed as required in ~~15-10-203--and~~ 15-10-204."

Section 9. Section 15-10-208, MCA, is amended to read:

"15-10-208. Increase over legal maximum not authorized -- reductions permitted. Nothing contained in this ~~section~~ part ~~shall~~ may serve to extend or authorize any millage in excess of the maximum millage permitted by law or prevent the reduction of millage."

Section 10. Section 15-17-303, MCA, is amended to read:

"15-17-303. Assignment of rights of county. (1) At any time after any parcel of land has been bid ~~in~~ upon by the county as the purchaser thereof for taxes as provided in 15-17-207, the same not having been redeemed, the county treasurer shall assign all the right of the county therein acquired at such sale to any person who ~~shall--pay~~ pays the

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amount for which the same was bid ~~in~~, with interest upon the original tax at the rate of 2/3 of 1% per month and the amount of all subsequent delinquent taxes, penalties, costs, and interest as provided by law upon the same from time to time when such tax became delinquent. ~~He~~ The county treasurer shall execute to such person a certificate for such parcel, which may be substantially in the following form:

"I, ..., the treasurer of the county of ....., state of Montana, do hereby certify that at the sale of lands pursuant to the tax assessment for the year 19.. in the county of .... and which sale was held on the .... day of ....., 19..., for the purpose of liquidating ~~said~~ assessment, the following described parcel of land, situate in ~~said~~ the county of ....., state of Montana, to wit: (insert description) was duly offered for sale; that there was no purchaser in good faith for the same as provided by law and no person or purchaser offered to take the same and pay the taxes, cost, and charges due as aforesaid. Accordingly, the whole amount of the property assessed and described as above was struck off to the county of .... as purchaser thereof for the sum of ....., and the same still remaining unredeemed, and on this day .... having paid into the treasury of ~~said~~ such county the amount for which the same was bid ~~in~~, together with all subsequent delinquent taxes,

penalties, costs, and interest amounting in all to .... dollars;

Now, therefore, in consideration thereof and pursuant to the statute in such case made and provided, I do hereby assign and set over all the right, title, and interest of the county of ....., state of Montana, acquired in ~~said~~ such lands under and by virtue of ~~said~~ the sale to ~~the said~~ ....., his heirs and assigns forever, together with all the rights, powers, and privileges of the ~~said~~ county of .... to take steps to receive a deed thereof or receive payment in case of a redemption; subject, however, to redemption as provided by law.

Witness my hand and official seal of office this .... day of ....., 19...

..... (County Treasurer)"

(2) ~~In case~~ If the certificate ~~hereinabove~~ described in subsection (1) ~~shall by accident become~~ becomes lost by accident or destroyed by the assignee, ~~then in such an event~~ the county treasurer shall issue a duplicate certificate to the assignee after the ~~said~~ county treasurer is convinced that the certificate has been lost or destroyed and after the assignee has made an affidavit to that effect.

(3) The provisions of this section ~~shall~~ apply to any ~~sales~~ sale of land for which a treasurer's deed ~~shall~~ was not issued by March 5, 1917, ~~have actually issued~~,

~~regardless of whether the sale shall have been made at any date heretofore, as well as to future sales for recovery of taxes~~ and the holder of any such certificate ~~shall therefore have~~ described in subsection (1) has the same rights, powers, and privileges with regard to securing a deed as any purchaser of ~~lands~~ land at tax sale may now have.

(4) As to any ~~lands~~ land received by the county in exchange, the same may be sold or leased the same as might have been done with the lands exchanged."

Section 11. Section 15-18-305, MCA, is amended to read:

"15-18-305. Defense to action -- redemption of parcels. Any defendant may appear in the action within the time provided by law for appearances in civil actions, may set up any defense to the action he may have, and may therein question the legality, validity, or the sufficiency of any act had in connection with the assessment or sale of the land. Any defendant to the action may make redemption of the lands from the tax sale by paying the total amount of delinquent taxes and penalties which plaintiff has paid, with interest thereon at 8% a year from date of payment, together with costs of the action. Upon such payment, a certificate of redemption ~~shall~~ must be issued by the county treasurer to the defendant so paying, and thereupon the

action ~~shall~~ must be dismissed. Whenever a defendant desires to redeem from a tax sale and pay all subsequent taxes upon any lot, piece, or parcel of real estate which a person such defendant owns or holds a mortgage or other lien against or has any interest in, the county treasurer of the county in which such real estate is situated shall permit such redemption and payment. In case the real estate has been assessed against any other property and is a lien thereon, then the county treasurer shall compute and apportion the tax that should have properly been assessed against the real estate sought to be redeemed and upon which the taxes are sought to be paid, the same as if the property had been separately assessed. Any personal property tax which is a lien upon such real estate ~~shall~~ must be likewise computed and apportioned on the same percentage basis as the tax assessed against the real estate is apportioned."

Section 12. Section 15-23-806, MCA, is amended to read:

"15-23-806. Lien of tax. The tax or penalty on gross proceeds is a lien upon the mine from which the metal is extracted and is a prior lien upon all owned or leased personal property and improvements used in extracting the ore or metal. The tax shall be collected in the manner provided ~~under 15-16-101 through 15-16-105, 15-16-503 through 15-16-505, parts 2, 3, and 6 of chapter 16, parts 1~~

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~~through 3 of chapter 17, and chapter~~ in chapters 16, 17, and 18 of this title."

Section 13. Section 15-23-807, MCA, is amended to read:

"15-23-807. Assessment ~~and collection~~ procedures. The gross proceeds of metal mines shall be assessed ~~and taxes thereon collected~~ under the provisions of 15-23-101 through 15-23-107."

Section 14. Section 15-24-104, MCA, is amended to read:

"15-24-104. Situs in state of proportionally registered fleets. (1) For the purposes of this ~~section~~ part, ~~all vehicles~~ any vehicle previously registered or which ~~registration has been applied for~~ had application for registration made under the provisions of 61-3-711 through 61-3-733 ~~are~~ is hereby declared to have a situs in the state for the purposes of taxation.

(2) The department or its designated agent shall collect the personal property taxes prescribed herein."

Section 15. Section 15-24-202, MCA, is amended to read:

"15-24-202. Tax-paid sticker -- display required. ~~(1)~~ The owner of a mobile home or housetrailer which is not taxed as an improvement, as improvements are defined in 15-1-101, shall pay the personal property tax in two

payments, except as provided in 15-24-206(2). The first payment is due within 30 days from the date of the notice of taxes due. The second payment is due no later than September 30 of the year in which the property is assessed. The department of revenue shall issue tax-paid stickers to the county treasurers. The treasurers shall issue the stickers to the owners of mobile homes and housetrailers if the taxes are paid in full. An owner shall then display the sticker, which ~~shall~~ must be visible from the exterior of the mobile home or housetrailer. No mobile home movement permit provided for in 15-24-206 may be issued unless the taxes have been paid in full to the county treasurer.

~~(2) The owner of a housetrailer must display on the back of his housetrailer or in another conspicuous place a property tax paid sticker prescribed by the division of motor vehicles, department of justice. The division shall produce the stickers for each county. The stickers shall contain the identifying number of the county and consecutive numbers starting with the number 1 in each county. The sticker shall be issued by the county treasurer at the time of payment of property taxes. The sticker shall be displayed from 15 days after the due date for personal property taxes of 1 year to the due date for personal property taxes of the next year."~~

Section 16. Section 15-24-203, MCA, is amended to

read:

"15-24-203. ~~Housetrailer---tax~~ Tax receipt -- when production required. If stopped on a highway or at a state vehicle weight station by a state highway patrolman or state vehicle weight station attendant, a person transporting a mobilehome or housetrailer must produce, if requested, the property-tax-paid receipt or a duplicate issued by the county treasurer where the vehicle was taxed."

Section 17. Section 15-24-206, MCA, is amended to read:

"15-24-206. Declaration of destination on imported mobile homes -- display -- tax receipt -- exemptions. (1) Whoever brings a mobile home into the state shall immediately upon arrival in the state execute a written declaration, verified under oath, stating the destination of the mobile home and such other information as the department of revenue ~~shall~~ may require and shall deliver the original of the declaration to ~~whoever~~ whomever is on duty at the nearest port of entry station, state vehicle weight station, or such other place and person as the department may prescribe. He shall also immediately upon arrival in the state affix a copy of the declaration to the mobile home at a conspicuous place.

(2) The treasurer shall issue the mobile home movement declaration provided for in this section to a person

required by this section to execute it, in such quantities as he requests to a maximum of 100. The treasurer shall issue such additional quantities of the declaration to a maximum of 100 as the person requests at the discretion of the county treasurer upon receipt from the person of the previously issued declarations properly executed. In any event executed declarations must be delivered to the treasurer within 30 days from their issue.

(3) Whoever moves a mobile home from a point within the state to another point within or without the state shall first:

(a) execute the declaration provided for in subsection (1) of this section, deliver the original of it to the treasurer of the county in which the move originates or to such other person as the department ~~shall~~ may prescribe, and affix a copy of it ~~to~~ in a conspicuous place on the mobile home to be moved~~-at-a-conspicuous-place~~;

(b) obtain from the county treasurer of the county in which the move originates a receipt showing payment in full of property taxes due with respect to that mobile home~~--to the-date-it-is-moved~~.

(4) The provisions of subsection (3)(b) ~~of--this section-shall~~ do not apply whenever a person moves a mobile home:

(a) from a point without to a point within the state;

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(b) between places of business of dealers within or without the state;

(c) from the place of business of a dealer to a point within or without the state."

Section 18. Section 15-24-302, MCA, is amended to read:

"15-24-302. Collection procedure. All property mentioned in ~~[the preceding section]~~ 15-24-301 ~~shall be~~ is assessed at the same value as property of like kind and character, and the assessment, levy, and collection of the tax ~~shall be~~ is governed by the provisions of 15-8-408; 15-16-111 through 15-16-115; 15-16-404; chapter 17, part 9; and 15-24-202(1); as amended, except livestock taxation which is governed by part 9 of this chapter, 81-7-104, and Title 81, chapter 7, part 2."

Section 19. Section 15-24-1001, MCA, is amended to read:

"15-24-1001. Custom combiner's tax -- collection -- distribution -- not transferable. (1) In lieu of the taxes required by 15-24-301, motor vehicle license fees and gross vehicle weight fees, overwidth and overheight permits, Title 61, a nonresident engaged in the business of custom combining who brings equipment into the state shall pay a fee of $40 per unit for a period beginning July 1 and ending October 31. A unit shall include:

(a) one truck suitable for hauling grain;

(b) one header trailer or one combine trailer; and

(c) pickup trucks and all other equipment, except combines, used by a nonresident and brought into the state as part of his business of custom combining.

(2) The fee required by this section ~~shall~~ must be collected by the department of highways. Upon payment of the fee, the department of highways ~~shall~~ must provide an identifying device to be displayed on each truck, header trailer, or combine trailer and other equipment used by the nonresident in his business of custom combining in the state, which device ~~shall be~~ is valid for a period beginning July 1 and ending October 31.

(3) All fees collected under this section ~~shall~~ must be distributed not later than December 1 immediately following the period of license as follows: 62 1/2% to the county general fund in the county in which the permittee declares the greatest amount of time will be spent to operate, 37 1/2% to the earmarked revenue fund for the department of highways.

(4) The identifying devices and fee paid for each unit ~~shall~~ is not be transferable from one vehicle to another or transferable on the sale or change of ownership.

(5) Any owner or operator of any equipment included in the unit definition in subsection ~~(2)~~ (1) of this section

who violates any provision of this section is guilty of a misdemeanor and ~~shall--be-punished~~ punishable by a fine of not more than $300 or by a sentence of not more than 60 days in the county jail, or both."

Section 20. Section 15-30-201, MCA, is amended to read:

"15-30-201. Definitions. When used in 15-30-201 through 15-30-209, the following definitions apply:

(1) "Agricultural labor" includes all services performed on a farm or ranch in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) "Employee" includes an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision thereof or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

(3) "Employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person; except that if the person for whom the individual performs or performed the service does not have control of the payment of the wages for such

service, the term "employer" means the person having control of the payment of such wages.

~~(4)--"Payroll--period"--means--a--period--for--which--a payment-of-wages-is-ordinarily-made-to-the-employee--by--his employer.~~

~~(5)~~(4) "Wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash, except that such term shall not include remuneration paid:

(a) for active service as a member of the armed forces of the United States;

(b) for agricultural labor as defined in subsection (1);

(c) for domestic service in a private home, a local college club, or local chapter of a college fraternity or sorority;

(d) for casual labor not in the course of the employer's trade or business performed in any calendar quarter by an employee unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this subsection ~~(5)~~(4)(d), an individual ~~shall--be-deemed~~ is considered to be regularly employed by an employer during a calendar quarter

only if:

(i) on each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business;

(ii) such individual was regularly employed (as determined under subsection ~~(5)(4)~~(d)(i)) by such employer in the performance of such service during the preceding calendar quarter;

(e) for services by a citizen or resident of the United States for a foreign government or an international organization;

(f) for services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(g) (i) for services performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution; or

(ii) for services performed by an individual in and at the time of the sale of newspapers or magazines to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of

such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service or is entitled to be credited with the unsold newspapers or magazines turned back;

(h) for services not in the course of the employer's trade or business to the extent paid in any medium other than cash when such payments are in the form of lodgings or meals and such services are received by the employee at the request of and for the convenience of the employer;

(i) to or for an employee as a payment for or a contribution toward the cost of any group plan or program which benefits the employee, including but not limited to life insurance, hospitalization insurance for the employee or dependents, and employees' club activities."

Section 21. Section 15-30-221, MCA, is amended to read:

"15-30-221. Withholding on payments to nonresidents -- exception. (1) Every person, firm, corporation, association, partnership, or fiduciary doing business in or having income in the state of Montana, including the state of Montana, its agencies and instrumentalities, counties, cities, towns, school districts, and municipal corporations of every kind, which knowingly makes payments of any kind to any nonresident of the state of Montana for services performed

within the state of Montana other than those ~~described~~ payments excepted in 15-30-201 ~~and--15-30-202~~ (5) or for casual sales of property, either real or personal, located within the state of Montana, or any prizes or winnings payable from or within the state of Montana or hiring or having a contract with any nonresident of a temporary nature to be carried out within the state of Montana shall deduct from such payment or payments an amount, to be set by the department, not to exceed 3% of such payment which shall be transmitted by him to the department as partial payment of such nonresident's income tax.

(2) Upon finding that reports and information in addition to that now required by law or regulation should be filed in order to insure the collection of Montana state income tax on payment to nonresidents for leases, rentals, or royalties derived from property located within the state of Montana, the department may adopt rules requiring the filing of such reports and information.

(3) If, upon notice to a nonresident taxpayer and hearing, the department finds that withholding should be made on payments to the taxpayer for leases, rentals, or royalties derived from property located within the state of Montana in order to insure the collection of Montana state income tax, it may order withholding on such payments in an amount equal to the tax liability of the nonresident

taxpayer. Such order ~~shall--be~~ is binding upon all withholding agents, as hereinafter described, who ~~shall~~ receive a copy thereof by mail or otherwise until such agent ~~shall-receive~~ receives a copy of an order of the department terminating such withholding as to the nonresident taxpayer.

(4) Payments made for livestock or agricultural products raised or grown outside Montana and sold at a market within this state ~~shall-not-be~~ are not subject to withholding under this section."

Section 22. Section 15-31-202, MCA, is amended to read:

"15-31-202. Election by small business corporation. (1) Except as provided in subsection (6), any small business corporation may elect, in accordance with the provisions of this section, not to be subject to the taxes imposed by this chapter. Such election shall be valid only if consented to by all persons who are shareholders in such corporation. The election is effective:

(a) on the first day of the first taxable year for which such election is effective, if such election is made on or before such first day; or

(b) on the day on which the election is made, if the election is made after such first day.

(2) If a small business corporation makes an election under subsection (1), then:

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(a) with respect to the taxable years of the corporation for which such election is in effect, such corporation ~~shall~~ is not be subject to the taxes imposed by this chapter and, with respect to such taxable years and all succeeding taxable years, the provisions of this part ~~shall~~ apply to such corporation; and

(b) with respect to the taxable years of a shareholder of such corporation in which or with which the taxable years of the corporation for which such election is in effect end, the provisions of this part ~~shall~~ apply to such shareholder, and with respect to such taxable years and all succeeding taxable years, the provisions of this part ~~shall~~ apply to such shareholder.

(3) An election under subsection (1) may be made by a small business corporation for any taxable year at any time during the first month of such taxable year or at any time during the month preceding such first month. Such election ~~shall~~ must be made in ~~such manner as~~ accordance with rules prescribed by the department of revenue ~~shall prescribe by regulations~~.

(4) An election under subsection (1) ~~shall be~~ is effective for the taxable year of the corporation for which it is made and for all succeeding taxable years of the corporation unless it is terminated, with respect to any such taxable year, under subsection (5).

(5) (a) (i) An election under subsection (1) made by a small business corporation ~~shall terminate~~ terminates if any person who was not a shareholder in such corporation at the time of the initial election under subsection (1) subsequently becomes a shareholder in such corporation and affirmatively refuses ~~(in such manner as~~ accordance with rules prescribed by the department ~~shall by rules prescribe~~) to consent to such election on or before the 60th day on which he acquires the stock.

(ii) If the person acquiring the stock is the estate of a decedent, the period under subsection (5)(a)(i) for affirmatively refusing to consent to the election ~~shall expire~~ expires on the 60th day after whichever of the following is the earlier:

(A) the day on which the executor or administrator of the estate qualifies; or

(B) the last day of the taxable year of the corporation, in which the decedent died.

(iii) Any termination of an election under subsection (5)(a)(i) by reason of the affirmative refusal of any person to consent to such election ~~shall be~~ is effective for the taxable year of the corporation in which such person becomes a shareholder in the corporation and for all succeeding taxable years of the corporation.

(b) An election under subsection (1) made by a small

business corporation may be revoked by it for any taxable year after the first taxable year for which the election is effective. An election may be revoked only if all persons who are shareholders in the corporation on the day on which the revocation is made consent to the revocation. A revocation under this paragraph ~~shall be~~ is effective:

(i) for the taxable year in which made, if made before the close of the first month of such taxable year;

(ii) for the taxable year following the taxable year in which made, if made after the close of such first month, and for all succeeding taxable years of the corporation. Such revocation ~~shall~~ must be made in ~~such manner as~~ accordance with rules prescribed by the department ~~shall prescribe by regulations~~.

(c) An election under subsection (1) made by a small business corporation ~~shall terminate~~ terminates if the corporation ceases to meet the definition of a small business corporation at any time after election is effective under subsection (1).

(d) Such termination ~~shall be~~ is effective for the taxable year of the corporation in which the corporation ceases to be a small business corporation and for all succeeding taxable years of the corporation.

(6) If a small business corporation has made an election under subsection (1) and if such election has been

terminated or revoked under subsection (5), such corporation ~~and any successor corporation~~ ~~shall~~ is not be eligible to make an election under subsection (1) for any taxable year prior to its fifth taxable year which begins after the first taxable year for which such termination or revocation is effective unless the department consents to such election.

(7) This election ~~shall~~ is not be effective unless the corporate net income or loss of such electing corporation ~~shall have been~~ is included in the stockholders' adjusted gross income as ~~such is~~ defined in 15-30-111.

(8) Every electing corporation ~~shall be~~ is required to pay the minimum fee of $10 required by ~~[84-1501]~~ 15-31-204."

Section 23. Section 15-31-521, MCA, is amended to read:

"15-31-521. Closing agreements. (1) The director of revenue or any person authorized in writing by him is authorized to enter into an agreement with any ~~person~~ taxpayer relating to the liability of such ~~person~~ taxpayer in respect to the tax imposed by this chapter for any taxable period.

(2) Any such agreement ~~shall be~~ is final and conclusive, and except upon a showing of fraud or malfeasance or misrepresentation of a material fact:

(a) the case may not be reopened as to matters agreed upon or the agreement modified by any officer, employee, or

agent of this state; and

(b) in any suit, action, or proceeding under such agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, the agreement may not be annulled, modified, set aside, or disregarded."

Section 24. Section 15-31-601, MCA, is amended to read:

"15-31-601. Central reporting system for identification of corporations. It ~~shall be~~ is the duty of the department of revenue to establish a central reporting system to assist in the identification of corporations, foreign and domestic, which transact business within the state of Montana and/~~or~~ are subject to taxation by the state of Montana ~~pursuant to the provisions of [Title 84]~~."

Section 25. Section 15-31-605, MCA, is amended to read:

"15-31-605. List of corporations compiled by department of revenue. The department of revenue shall compile a list of all corporations, foreign and domestic, subject to taxation by the state of Montana ~~under the terms of [Title 84]~~ to be filed in the central reporting system. ~~Said~~ The list ~~shall~~ must contain the following information:

(1) the name of the corporation;

(2) the principal office of the corporation;

(3) the name and address of the registered agent of the corporation in Montana;

(4) whether the corporation filed such reports, returns, and other information pursuant to the terms of this chapter."

Section 26. Section 15-32-108, MCA, is amended to read:

"15-32-108. Extension of existing classifications. Any classification of property under the provisions of ~~[15-32-103 section 3, Chapter 548, Laws of 1975,~~ that existed prior to ~~the effective date of this act~~ January 1, 1977, approved by the department of revenue before April 19, 1977, shall continue in effect until December 31, 1982. On January 1, 1983, the taxable percentage of such property shall be determined under chapter 6, part 1, or that part as it may be recodified or amended."

Section 27. Section 15-36-109, MCA, is amended to read:

"15-36-109. Penalty for violations. ~~Any violation~~ Violation of any of the provisions of this part ~~shall be~~ deemed is a misdemeanor and ~~shall be punished~~ punishable by a fine of not exceeding $1,000 or by imprisonment in the county jail for not exceeding 6 months or by both such fine and imprisonment."

Section 28. Section 15-51-111, MCA, is amended to

read:

"15-51-111. Procedure to compute tax in absence of statement. If any person fails, neglects, or refuses to file any statement required by 15-51-101 within the time therein required, the department of revenue shall, after such time has expired, proceed to inform itself as best it may regarding the number of KWH produced by such person in this state during such quarter and compute the amount of taxes due to the state from such person for such quarter and add the penalty and interest as required by 15-51-103. The department shall mail to the person required to file a quarterly report and pay such tax a letter setting forth the amount of tax, penalty, and interest due, and the letter ~~shall~~ must further contain a statement that if payment is not made within such time, a lien may be filed. Upon receipt of the letter, the person shall remit to the department the full amount of tax, penalty, and interest within 15 days. The 10% penalty may be waived by the department if reasonable cause for failure and neglect to file the statement required by ~~15-51-113~~ 15-51-101 is provided to the department."

Section 29. Section 15-55-107, MCA, is amended to read:

"15-55-107. Actions to recover delinquent taxes and penalties -- additional taxes. (1) If the taxes and

penalties provided for in this chapter to be paid by the railroad company on the property of such freight line company remain unpaid more than 90 days from the due date, the department shall cause an action to be brought to recover the amount of such delinquent taxes and penalties in the district court of any county within the state of Montana in which service can be had on the railroad company which is liable for the payment of such taxes or penalties or in which the property of such delinquent railroad company can be seized under attachment or garnishment proceedings in the manner prescribed by law.

(2) In the event the state tax appeal board, under its authority to raise or lower the rate of the taxes which would be payable on the cars of such freight line company if taxed upon an ad valorem basis, ~~shall~~ finds, after a hearing as herein provided, ~~find~~ taxes due from any such freight line company in excess of the 5% 5 1/2% of all gross revenue in this state which is required to be paid by the railroad companies, such additional tax as so determined ~~shall be~~ is due and payable by the freight line company upon which the assessment is made, and if such tax ~~shall remain~~ remains unpaid for more than 90 days after notification of such assessment by the state tax appeal board, the board shall cause an action to be brought to recover the amount of such additional tax in the district court of any county within

the state of Montana in which service can be had on the freight line company liable for the tax or in which the property of such delinquent freight line company can be seized under attachment or garnishment proceedings in the manner prescribed by law."

Section 30. Section 15-70-208, MCA, is amended to read:

"15-70-208. Examination of records. (1) The department of revenue or its authorized representative is hereby empowered to examine the books, papers, records, and equipment of any gasoline distributor or any person dealing in, transporting, or storing gasoline as defined in this part and to investigate the character of the disposition which any person makes of such gasoline in order to ascertain and determine whether all ~~excise~~ license taxes due hereunder are being properly reported and paid. If such books, papers, records, and equipment are not maintained in this state at the time of demand, they ~~shall~~ must be furnished to the department for review or such dealer ~~shall~~ must bear the reasonable cost of examination by an agent authorized or designated by the department at the place where such books or records are kept, ~~provided~~ However, the taxpayer ~~shall~~ is not be liable for such costs for a period exceeding 1 week or for such longer period as he may consent to in writing unless the result of such examination is the

payment of a tax deficiency.

(2) The records, receipts, and invoices and any other pertinent papers supporting sales of every distributor or any person dealing in, transporting, or storing gasoline ~~shall~~ must be open and subject to inspection by the department or any of its employees or assistants during business hours in order to ascertain the amount of license tax due."

Section 31. Section 20-9-115, MCA, is amended to read:

"20-9-115. Notice of preliminary budget filing and final budget meeting. ~~(1)~~ Between July 10 and July 20 of each year, the clerk of each district shall publish notice one time in the official newspaper of the county stating that the preliminary budget for the district for the school fiscal year just beginning, as prepared and adopted by the trustees, is on file in his office and open to inspection by all taxpayers. The notice shall also state that the trustees will meet at 10 a.m. on the fourth Monday in July for the purpose of considering and adopting the final budget of the district, that the meeting of the trustees may be continued from day to day until the final adoption of the district's budget, and that any taxpayer in the district may appear at such meeting and be heard for or against any part of the budget.

~~(2) Notice given under this section meets the~~

~~requirement-for-notice-contained-in-15-10-203.~~"

NEW SECTION. Section 32. Rulemaking authority. The department of revenue may adopt rules necessary for the taxation of property under [chapter 35 of Title 15].

Section 33. Codification. Section 33 is intended to be codified as an integral part of Title 15, chapter 35, and the provisions of Title 15, chapter 35, apply to section 33.

Section 34. Repealer. Sections 84-510 and 84-6210, R.C.M. 1947, are repealed.

Section 35. Repealer. Sections 15-23-509, 15-24-401, and 15-51-105, MCA, are repealed.

-End-

HB 191

sight Committee make a study of alcoholic beverage regulations in the state. He said he felt such a study should be made because of the present quota system being used and the increase in population will permit addition licenses to be issued, thus creating possible problems. Mr. Groff of the Department of Revenue was also present and gave supporting testimony to the bill, saying he felt such a study should be made. The committee discussed the bill and the work of the Oversight Committee and finally, agreed to move the bill.

Senator Goodover Moved Senate Joint Resolution 30 Do Pass. The motion carried. Note for the record at this point, the absence of Senators Brown, Towe and Watt.

CONSIDERATION OF HOUSE BILL 581: Representative Vinger introduced the bill which was simple, in that it merely changed the dates on which annual and monthly special fuel tax returns must be filed. Vice Chairman was in charge of the meeting during this part of the hearing, and called for questions from the committee, there being no other proponents, or opponents. The question was raised of Mr. Nichols of the Motor Fuels Division of the Highway Department, on having a quarterly filing rather than the monthly filing and Mr. Nichols responded there was a bill introduced to do that. This bill, however, merely changed dates of filing to the end of the month. The committee agreed with the proposed change and opted to move the bill:

Senator Manley Moved House Bill 581 Be Concurred In. The motion carried unanimously.

CONSIDERATION OF HOUSE BILL 181: Representative Marks was unable to present his bill and Mr. Lear explained the bill in his absence. He went through the bill explaining the numerous clarifications in the Title 15. Following his explanation Vice Chairman Goodover asked for other proponents or opponents and then, for questions from the committee. In answer to one of the questions, the committee was informed the changes would make no substantial changes to the codes. This ended hearing on HB181.

CONSIDERATION OF HOUSE BILL 191: Representative Dussault said the bill to continue the 6-mill levy for the university system must be passed through 1988. Curt Johnson, Student Lobbyist, was a proponent of the bill, also Mr. Forcell. The Vice Chairman called for other proponents and opponents; there were none. The committee then asked questions of the witnesses and one point was made by the bill's sponsor, that the legislation specified no more than 6 mills could be levied under the bill. It was pointed out that slightly less than 6 mills was appropriated during the last two years. Dr. Forcell said the bill meets the requirement for the appropriation. Following further discussion, hearing on HB191 was closed.

The committee then were directed by the Vice Chairman to again look at SB184, motor vehicle fee system. They again looked over the various fee schedules that have been submitted and considered by the committee. Several of the committee members said they felt the schedules were based on the wrong figures, that the values were too high. They again discussed the setting of the fees and expressed their hope that a more equitable method of vehicle tax could be arrived at. They [illegible] car sales tax and it was mentioned that if that were

Date Mar 7 1979

ROLL CALL

SENATE TAXATION COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
SEN. GOODOVER (Vice Chairman)	✓		
SEN. BROWN			✓
SEN. HAGER	✓		
SEN. MANLEY	✓		
SEN. MANNING	✓		
SEN. McCOLLUM	✓		
SEN. NORMAN	✓		
SEN. ROSKIE	✓		
SEN. SEVERSON	✓		
SEN. TOWE	✓		
SEN. WATT			✓
CHAIRMAN TURNAGE	✓		

Each Day Attach to Minutes.

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

March 17, 1979

The fifty-first meeting of the committee was held on the above ce in Room 415 of the State Capitol Building with Chairman Turnage charge of this executive session.

ROLL CALL: Roll call found all members present with the exception of Senator Watt who was excused.

The Chairman brought SB384 to the attention of the committee ain. A revised Fiscal Note had been ordered on the bill and as t it was not available. Chairman Turnage felt the Fiscal Note ould be looked over before the bill is passed out again. The mmittee discussed various related bills concerning the setting f a ceiling on property taxes, feeling that Montana residents do ed such limit.

SB285, which had failed on a Do Pass motion, will remain in he committee, and will be recorded as a Tie until such time as the ommittee takes further action on it.

HB882 was again brought up for discussion and the committee voted negatively:

Senator Roskie Moved HB882 Be Not Concurred In. Motion carried. Note for record Senator Norman voted "No" and Senator Watt gone for the day.

Senator McCallum then Moved HB191 Be Concurred In. Motion was carried. "No" votes were cast by Senators Hager, Manley and Goodover.

HB181 was then brought up and an outline of the changes the bill makes in the codes was distributed, see Exh. #1, attached. Following their discussion of the code amendments, the committee agreed on a Statement of Intent: "It is the intent of the Legislature that the rulemaking authority in existence at the present time exercised by the Department of Revenue shall not be enlarged by the passage of this bill."

Senator Towe then Moved HB181 Be Concurred In. Motion carried.

Discussion then centered on HB45. Sen. McCallum made a tentative motion to Table the bill, however he later withdrew this motion. The Chairman requested that an excerpt from the Montana Subdivision Laws booklet be entered into the minutes, concerning bonding bills, etc., see attached Exh. #2. Researcher Terry Cohea was asked to make an analysis of HB45 and get the House amendments and minutes of the hearing for the committee to consider at a future date.

The meeting then adjourned.

Lou A. Turnage

ITS MEMBERS
[illegible] GRAHAM
[illegible]
[illegible] BAKER
[illegible]
T BLAYLOCK
M GOODOVER
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SHARON CONNELLY
DIRECTOR, ACCOUNTING DIVISION

LC561

1979 Legislature
Code Commissioner Bill - Summary

House Bill No. 181

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO TAXATION.

(This summary does not include discussion of routine form or grammatical changes.)

Section 1. 15-1-105. Changed "this title" to "the state tax laws" because many provisions of former Title 84 are codified outside of Title 15, M.C.A.

Section 2. 15-1-401. Added "or tax", "license fee or", "fee or tax", etc., to clarify terminology and provide consistency within the section.

Section 3. 15-6-113. In (1)(d), changed "official guide tractors and farm implements" to "Official Guide Tractors and Farm Equipment" to clarify the source and remove uncertainty in the sentence structure.

Section 4. 15-6-117. In (4), added "or present value, whichever is lower,". This section, before amendment, conflicted with 15-24-401, M.C.A. However, the "present value" provision was thoroughly debated before enactment by Ch. 182, L. 1977, and the subsequent enactment of the conflicting language in this section by Ch. 566, L. 1977, was an oversight.

Section 5. 15-7-215. Changed "[act]" to "part". This change was not made by recodification because sections 15-8-111 and 15-7-103 are provisions of the "act" not included within

"part", and sections 15-7-208, 15-7-209, and 15-7-216 are sections included within "part" which were not included within "act". The only section of those referred to which significantly broadens the scope of application of 15-7-215 is 15-7-209, and the legislature intended that 15-7-209, when enacted, become an integral part of the laws governing appraisal of agricultural property.

Section 6. 15-10-203. Changed "advertises" to "gives notice of", added "and in the same manner", and changed "its intention to fix its budget" to "hearing on its preliminary budget" in order to clarify the notification procedure contemplated in this section.

Section 7. 15-10-204. In (1), changed "advertise" to "publish notice of" for uniform terminology; changed "a newspaper of general circulation in the county, as provided in 15-10-203" to "in the same manner that it gives notice of hearing on its preliminary budget for the forthcoming fiscal year" in order to provide consistency in the notice procedures and correct an error existing since the enactment of 15-10-203 and 15-10-204, and changed "advertisement" to "notice" for uniform terminology. In (2), changed "advertise" to "publish notice" for uniform terminology and deleted "15-10-203" because it does not add any notice provisions not already included in the citation to "subsection (1)". Deleted "(3) Public notice given and public hearings held in compliance with the requirements of Title 20, chapter 9, part 1, in setting school budgets satisfy the requirements contained in this section." in order to provide consistency in the notice procedures for each taxing authority in adopting a preliminary budget and seeking increases of tax revenue.

Section 8. 15-10-207. Changed "millage vote" to "notice" to clarify terminology (15-10-203 does not mention a "millage vote"); changed "readvertise" to "give notice anew" and "revote" to "proceed" in order to clarify terminology and provide consistency in usage.

Section 9. 15-10-208. Changed "section" to "part" because the reference to "section" is meaningless and the legislature intended the reference to include all the provisions enacted in Ch. 286, L. 1974, which are now included in "part" 2 of chapter 10. An additional section (15-10-201) is included by this reference to "part" but does not affect the reference.

Section 10. 15-17-303. In (1), changed "He" to "The county treasurer" for clarification. In (2), rearranged sentence structure and added "in subsection (1)" for clarification. In (3), changed "deed shall not by March 5, 1917, have actually issued " to "deed was not issued by March 5, 1917" and deleted "regardless of whether the sale shall have been made at any date heretofore, as well as to future sales for recovery of taxes" in order to remove obsolete language and provide clarity; and added "described in subsection (1)" to remove ambiguity as to the "certificate" referred to.

Section 11. 15-13-305. Changed "a person" to "such defendant" to clarify who "a person" is referring to (see Ch. 52, L. 1977, and Ch. 126, L. 1977) as amending the language in the original enactment which read "said person".

Section 12. 15-23-806. Changed "under 15-16-101 through 15-16-105; 15-16-503 through 15-16-505; parts 2, 3, and 6 of chapter 16; parts 1 through 3 of chapter 17; and chapter 18" to "in chapters 16, 17, and 18" because the prior reference was a general reference to the collection procedures in "chapter 41" of R.C.M. Title 84; thus, a general reference in the M.C.A. is appropriate and the inclusion of additional material by the proposed amendment does not affect meaning.

Section 13. 15-23-807. Deleted "and taxes thereon collected" because "15-23-101 through 15-23-107" do not address collection of taxes but, rather, assessment.

Section 14. 15-24-104. Changed "section" to "part" because the reference is meaningless unless it includes the provisions of the "part", which address interstate motor vehicle fleet taxation; rearranged sentence structure for clarity.

Section 15. 15-24-202. Deleted subsection (2). This subsection conflicts with subsection (1) and is an obsolete display provision which has been discontinued by the division of motor vehicles since the display provisions of subsection (1) are adequate.

Section 16. 15-24-203. Added "mobile home or" in order to provide consistency in application of the definitional section, which was amended to distinguish "mobile homes and house trailers" subsequent to enactment of this section.

Section 17. 15-24-206. Sentence structure in (3)(a) rearranged for clarity. In (3)(b), deleted "due" and "to the date it is moved" because 15-24-202, M.C.A., was amended subsequent to the enactment of this section to specifically require that "No mobile home movement permit provided for in 15-24-206 may be issued unless the taxes have been paid in full" (emphasis added). (See Ch. 475, L. 1975.)

Section 18. 15-24-302. Changed "[the preceding section]" to "15-24-301". The "preceding section" referred to was repealed in 1967, but the subject matter referred to is also contained in 15-24-301, M.C.A.

Section 19. 15-24-1001. In (5), changed "(2)" to "(1)" since only subsection (1) discusses a "unit definition".

Section 20. 15-30-201. Deleted the definition of "payroll period" because "payroll period" is not used in 15-30-201 through 15-30-209. Subsection (5) was renumbered and internal references to subsection (5) were renumbered because of the deletion of subsection (4).

Section 21. 15-30-221. In (1), changed "described in 15-30-201 and 15-30-202" to "payments excepted in 15-30-201(5)" in order to clarify. Section 15-30-202 has only a reference to "active service as members of the armed forces" that could be relevant in the internal reference, but that language is redundnat with 15-30-201(5)(a). Furthermore, a narrow reference to subsection (5) of 15-30-201 is necessary to distinguish the exceptions from "wages" contemplated by the legislature.

Section 22. 15-31-202. In (8), changed "[84-1501]" to "15-31-204" because the legislature, by enacting Sec. 2, Ch. 11, Ex.L. 1969, intended that the $10 minimum fee in 84-1501.5 R.C.M. 1947 (changed by recodification to 15-31-204, M.C.A.) supplant the $50 minimum fee in 84-1501, R.C.M. 1947, as to small business corporations electing not to be subject to taxation under chapter 15, Title 84, R.C.M. 1947.

Section 23. 15-31-521. In (1) changed "person" to "taxpayer" and made grammatical changes for clarity.

Section 24. 15-31-601. Deleted "pursuant to the provisions of [Title 84]" as redundant with "subject to taxation by the state of Montana".

Section 25. 15-31-605. Deleted "under the terms of [Title 84]" as redundant with "subject to taxation by the state of Montana".

Section 26. 15-32-103. Prior to the 1977 Legislature the R.C.M. 1947 section that corresponds to 15-32-103 provided for a reduction of property tax for energy conservation investments. The 1977 legislature changed the statute to make energy related investments a deduction from gross income for individuals and corporations.

Section 15-32-103 allows qualifying property under the 1975 enactment to maintain the property tax reduction until December 31, 1982.

The proposed amendment deletes the reference to 15-32-103 because there is no longer any property tax classification under that section. The reference is changed to the original session law enacting the property tax reduction.

The proposed amendment also changes the reference "the effective date of this act" to the actual date the act became applicable. This amendment is proposed because recodification requires the elimination of all references to "this act".

Section 27. 15-36-109. Grammatical changes.

Section 28. 15-51-111. Changed "15-51-113" to "15-51-101" because 15-51-113 contains no requirement that a statement be filed. 15-51-101 provides for the required statement, for which a 10% penalty is attached for failure to file.

Section 29. 15-55-107. In (2), changed "5%" to 5 1/2%" because Sec. 1, Ch. 346, L. 1969, increased the tax rate.

Section 30. 15-70-208. In (1), changed "excise" to "license" for uniform terminology ("excise tax" is not referred to in any other section within part 2, chapter 70, Title 15; but rather "gasoline license tax" is utilized).

Section 31. 20-9-115. Deleted "(2) Notice given under this section meets the requirement for notice contained in 15-10-203." because 15-10-203, M C A., was amended to refer a taxing authority to its own procedure for giving notice of preliminary budget as the guide to follow in notifying the public of its intention to increase tax revenue.

Section 32. New. This section is enacted because former section 84-708.1(2), R.C.M. 1947, authorized the department of revenue to adopt rules necessary for the taxation of property under several chapters of former Title 84, R.C.M. 1947, including chapter 13, Title 84, R.C.M. 1947, which was recodified as chapter 35, Title 15, M C A.

Section 33. 84-510, R.C.M. 1947. This section is superseded by 77-2-313(3), M C A.

84-6210, R.C.M. 1947. This section is repealed because it is in conflict with part 2, chapter 7, Title 45, which provides a criminal penalty for violations of recordkeeping, reporting, and filing requirements of the state tax laws.

Section 34. 15-23-509. This section is repealed because it is in conflict with part 2, chapter 7, Title 45, which provides a criminal penalty for violations of record-keeping, reporting, and filing requirements of the state tax laws.

15-24-401. This section is repealed because its language is redundant with 15-6-117, M C A , as amended by section 5 of this act.

15-51-105. This section is repealed for the same reason that 15-23-509, MCA is repealed.

The advantages to allowing the issuing of industrial revenue bonds for new subdivision services consist mainly of providing one more means of financing services for subdivisions and of providing a means by which property owners at the early development stage would not have to finance eventual expansion of the service.

An argument against such a proposal holds that the federal government is beginning to study more carefully the proliferation of tax-free bonds, and may eventually more strictly regulate the purposes for which the bonds are issued. However, with little opposition, the Subcommittee directed the drafting of LC 0053 (Appendix E) to provide for the issuance of industrial development bonds to finance water supply and distribution systems and sewage treatment and disposal services for residential or commercial subdivisions. The bill simply amends the definition section (90-5-101) of the industrial development bond act to allow for such services and in section 90-5-102 adds a proviso allowing a municipality or county to operate a water or sewage facility if the proposed project connects to an existing system and if such operation would be in the public interest. The Subcommittee endorsed this bill unanimously throughout the final meetings.

General Services

Following adoption of the industrial development bond bill, the Subcommittee discussed the possibility of adopting a bill allowing counties to issue revenue bonds to finance a wide variety of services. Municipalities have held this power for over 50 years with the advantage of having to pledge only the revenue from the specific project to pay off the bond. Presently counties do not have this authority and must pledge the property (or a general obligation) to repay the bond. The Subcommittee felt granting counties this revenue bonding authority would aid in the provision of high quality services outside municipalities where many of the more severe problems in this area exist. Thus the Subcommittee unanimously recommended LC 0054, granting counties the authority to issue revenue bonds for financing construction and maintenance of services and granting counties the authority to issue refunding revenue bonds. (Refunding authority is necessary if the county should want to refinance the revenue bond at a more advantageous rate of interest.) The bill is essentially modeled after the Municipal Revenue Bond Act that has served cities and towns well for over 50 years. Although the Subcommittee submitted this bill to bond experts in Montana and Minneapolis for comments, none were forthcoming. Neither the Subcommittee nor its staff possessed the expertise to judge the quality of specific sections of the bill; however, the Subcommittee endorsed the principles behind it.

March 13 19 79

MR. President

We, your committee on Taxation

having had under consideration Statement of Intent - House Bill No. 181

Respectfully report as follows: That Statement of Intent - House Bill No. 131

Statement of Intent as required by Section 5-4-404 is required in this bill under Section 32.

It is the intent of the Legislature that the rulemaking authority in existence at the present time exercised by the Department of Revenue shall not be enlarged by the passage of this bill.

Be Adopted

~~DO PASS~~

JERRY A. TURNAGE Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

March 17 19 79

President

e, your committee on Taxation

; had under consideration House Bill No. 131

ectfully report as follows: That House Bill No. 131

CONCURRED IN

~~PASS~~

JEAN A. TURNAGE - Chairman.

STATE PUB. CO.
Helena, Mont.

Date 2.17.1979

ROLL CALL

SENATE TAXATION COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
SEN. GOODOVER (Vice Chairman)	✓		
SEN. BROWN	✓		
SEN. HAGER	✓		
SEN. MANLEY	✓		
SEN. MANNING	✓		
SEN. McCOLLUM	✓		
SEN. NORMAN	✓		
SEN. ROSKIE	✓		
SEN. SEVERSON	✓		
SEN. TOWE	✓		
SEN. WATT			✓
CHAIRMAN TURNAGE	✓		

Each Day Attach to Minutes.

HOUSE BILL clarify the laws relating to Taxation.

181 Mr. Lear advised the Code Commissioner will try to put discrepancies together after the Legislature since they cannot be corrected in the present legislative session. The Code Commissioner now has authority make corrections, and there would be very isolated cases which could not be corrected. Under present code commissioner practice with two bills overlapping is the matter of time, and if it is erroneous, conflicts develop, it is through oversight because of the volume of bills coming in. It is impossible to keep track of so many bills affecting an area. If one bill is passed that says another thing, that is where you need the next session to clarify intent. Bruce McGinnis, Assistant Administrator of the Legal Division of the DoR, advised 401-402 is in the same section as is the payment of taxes under protest section.

Rep. Fabrega asked the corporation fee for Subchapter S corporations. Mr. McGinnis said they have been paying $10.

Regarding 15-32-108 - this section was first set for alternative energy. Alternative energy section is being transferred to the income tax section.

Executive Session:

Rep. Williams moved HB 188 DO PASS. Motion was adopted unanimously - Rep. Robbins was absent. Motion to go to consent calendar was made, but because Rep. Burnett objected, it did not carry.

Rep. Orren Vinger moved that HB 80 DO PASS. He then moved Item 1 of the proposed amendment attached Do Pass. Amendment Item 1 was approved unanimously. Further discussion brought about a motion by Reg. Fagg that further action be deferred until more information is available. Motion carried.

Rep. Fabrega moved that HB 154 DO NOT PASS. Motion carried - Representatives Robbins and Fagg were absent.

Rep. Fabrega moved that HB 161 DO PASS. Rep. Reichert moved that a maximum of $500 total deduction on a year's income tax return be permitted. No action was taken on either motion after further discussion.

Rep. Nordtvedt moved a substitute amendment that the 20% of rent paid by taxpayers be changed to 12-1/2% on page 2, line 3 since 1.5% property tax in the state corresponds to 12-1/2% rent which makes for equality as closely as possible.

Rep. Williams moved a substitute motion for all motions pending that no further action be taken before a fiscal note has been received. Motion to defer action carried with Reps. Johnson, Nordtvedt, Dassinger and Fabrega voting No. Rep. Dozier said his constituents would not be able to avail themselves of this proposed relief from income tax. The bill will be brought before the committee at a later date for further discussion.

The meeting adjourned at 10:45 a.m.

Josephine Lotte

Herb Huennekens

REP. HERB HUENNEKENS, Chairman

HOUSE BILL 461 - Rep. John Scully, Chairman of the Judiciary Committee, reported on HB 461. He is sending a letter with recommendations from the Judiciary Committee on leaving the jurisdiction proceedings in the defendant's area. The statute of limitations was too long when set at 10 years. The committee recommends 3 years for a misdemeanor and 5 years for a felony. The federal system is for 3 years plus 3 more if something wrong is found.

There is a problem with the attempt provision which should be a misdemeanor and actual evasion which should be a felony. The title would have to be amended.

Rep. Williams asked how lines are drawn between attempt and actual evasion. Rep. Scully said the court and the department of revenue would have to make the decision whether a misdemeanor or a felony.

HOUSE BILL 181 - Rep. Williams moved HB 181 DO PASS. Rep. Fabrega moved proposed amendments be adopted. No noes on amendment adoption. Reps. Robbins and Fagg were absent. Motion to DO PASS AS AMENDED was unanimously adopted. There was some discussion among committee members that a committee bill be proposed. Rep. Nordtvedt suggested a person who had a refund coming should get interest on it the same as he is charged when an underpayment is found.

HOUSE BILL 471 - Rep. Williams moved HB 471 DO PASS. Rep. Lien made a motion for all motions pending of DO NOT PASS. Motion carried with 8 voting Yes and 7 voting No. Reps. Huennekens, Dassinger, Williams, Fabrega, Bertelsen, Hirsch, Reichert voted No. Reps. Harrington, Robbins, Fagg, Dozier were absent.

HOUSE BILL 520 - Rep. Fabrega moved that HB 520 BE TABLED as Rep. Kemmis, requested. Unanimously adopted.

Meeting adjourned at 10:45 a.m.

Herb Huennekens

REP. HERB HUENNEKENS, Chairman

Josephine Lahti

Josephine Lahti, Secretary

STATEMENT OF INTENT RE: HB 181

It is the intent of the Legislature that the rulemaking authority in existence at the present time exercised by the Department of Revenue shall not be enlarged by the passage of this bill.

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HOUSE BILL NO. 181

INTRODUCED BY MARKS

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO TAXATION; REPEALING SECTIONS 84-510, 84-6210, R.C.M. 1947, AND SECTIONS 15-23-509, 15-24-401, AND 15-51-105, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-1-105, MCA, is amended to read:

"15-1-105. Fines and forfeitures to county. Except for the forfeiture described in 15-8-706(2), all fines, forfeitures, and penalties incurred by a violation of any of the provisions of ~~this title~~ the state tax laws must be paid into the treasury for the use of the county where the person against whom the recovery is had resides."

Section 2. Section 15-1-401, MCA, is amended to read:

"15-1-401. Payment of license fees under protest -- action to recover. (1) Whenever any license fee or tax is demanded of any person for the use and benefit of the state of Montana and the same is ~~deemed~~ considered unlawful by the person from whom the same is demanded, such person may pay the same, or so much thereof as may be ~~deemed~~ considered unlawful, under written protest, specifying the grounds of protest, to the state agency or officer responsible for collecting the license fee or tax.

(2) The person paying or his legal ~~representatives~~ representative may bring an action in a court of competent jurisdiction against the state agency or officer responsible for collecting the license fee or tax to recover the same, without interest. Any action instituted to recover any license fee or tax paid under protest ~~shall~~ must be commenced and summons and copy of complaint served within 60 days after the date of payment thereof to the state agency or officer responsible for collecting the license fee or tax. If such action ~~be finally~~ is decided adversely to the state, the state treasurer shall, upon receiving a copy of the final judgment in ~~said~~ such action, refund such license fee or tax to the person in whose favor such judgment is rendered."

Section 3. Section 15-6-113, MCA, is amended to read:

"15-6-113. Class twelve property -- description -- taxable percentage. (1) Class twelve property includes:

(a) boats and all watercraft;

(b) aircraft;

(c) motorcycles; and

(d) large farm machinery valued in the ~~official guide~~ tractors Official Guide Tractors and ~~farm implements~~ Farm Equipment and in department valuation schedules.

REFERENCE BILL

(2) Class twelve property is taxed at 11% of its market value."

Section 4. Section 15-6-117, MCA, is amended to read:

"15-6-117. Class sixteen property -- description -- taxable percentage. (1) Class sixteen property includes:

(a) business inventories as defined in this section; and

(b) mobile machines, valued as other heavy construction equipment is valued, used in new industries as defined in class eighteen.

(2) Mobile machines used in new industry are subject to the conditions imposed in class eighteen for other property used in new industries.

(3) "Business inventories" includes goods intended for sale or lease in the ordinary course of business and raw materials and work in progress with respect to such goods. Business inventories ~~shall~~ do not include goods leased or rented or mobile homes held by a dealer or distributor as part of his stock-in-trade.

(4) The market value of business inventories, for property tax purposes, is the cost or present value, whichever is lower, to the person subject to the inventory tax.

(5) Class sixteen property is taxed at 4.2% of market value."

Section 5. Section 15-7-215, MCA, is amended to read:

"15-7-215. Violation a misdemeanor. Any person who violates any provision of this ~~fact~~ part ~~shall be~~ is guilty of a misdemeanor."

Section 6. Section 15-10-203, MCA, is amended to read:

"15-10-203. Increase of tax revenue -- ~~advertising~~ notice of intention required. No taxing authority ~~shall~~ may budget an increased amount of ad valorem tax revenue exclusive of revenue from ad valorem taxation on properties appearing for the first time on the assessment roll unless it ~~advertises~~ gives notice of its intention to do so at the same time and in the same manner that it advertises gives notice of its ~~intention to fix~~ hearing on its preliminary budget for the forthcoming fiscal year."

Section 7. Section 15-10-204, MCA, is amended to read:

"15-10-204. Resolution or ordinance for increase over certified millage. No millage in excess of the department of revenue's certified millage ~~shall~~ may be levied until a resolution or ordinance ~~has been~~ is approved by the governing board of the taxing authority, which resolution or ordinance must be approved by ~~said~~ the taxing authority according to the following procedure:

(1) The taxing authority shall ~~advertise~~ publish notice of its intent to exceed the department's certified millage in ~~a newspaper of general circulation in the county~~,

as--provided--in--15-10-203 the same manner that it gives notice of hearings on its preliminary budget for the forthcoming fiscal year. The advertisement notice shall must state that the taxing authority will meet on a day, at a time and place fixed in the advertisement notice, which shall must be approximately 7 days after the day that the advertisement notice is published, for the purpose of hearing comments regarding the proposed increase and to explain the reasons for the proposed increase. The meeting may coincide with the meeting on the tentative budget as required by law.

(2) After the public hearing has been held in accordance with the above procedures, the taxing authority may adopt a resolution or ordinance levying a millage rate in excess of the certified millage. If the resolution or ordinance adopting said such millage rate is not approved on the day of the public hearing, the day, time, and place at which the resolution or ordinance will be scheduled for consideration and approval by the taxing authority must be announced at the public hearing. If the resolution or ordinance is to be considered at a day and time that is more than 2 weeks from the public hearing, the taxing authority must again advertise publish notice in the same manner as provided in 15-10-203-and subsection (1)-of-this-section.

(3)--Public--notice--given--and-public-hearings-held-in

compliance-with-the-requirements-of--Title--20,--chapter--9, part--1,--in-setting-school-budgets-satisfy-the-requirements contained-in-this-section."

Section 8. Section 15-10-207, MCA, is amended to read:

"15-10-207. Additional millage increase -- readvertising--and--revoting new notice required. If, after the initial millage-vote notice provided for in 15-10-203 the taxing authority determines that it requires a greater millage or fails to act in the specified period, it shall readvertise must give notice anew under 15-10-203 and revote proceed as required in 15-10-203-and 15-10-204."

Section 9. Section 15-10-208, MCA, is amended to read:

"15-10-208. Increase over legal maximum not authorized -- reductions permitted. Nothing contained in this section part shall may serve to extend or authorize any millage in excess of the maximum millage permitted by law or prevent the reduction of millage."

Section 10. Section 15-17-303, MCA, is amended to read:

"15-17-303. Assignment of rights of county. (1) At any time after any parcel of land has been bid in upon by the county as the purchaser thereof for taxes as provided in 15-17-207, the same not having been redeemed, the county treasurer shall assign all the right of the county therein acquired at such sale to any person who shall pay pays the

amount for which the same was bid in, with interest upon the original tax at the rate of 2/3 of 1% per month and the amount of all subsequent delinquent taxes, penalties, costs, and interest as provided by law upon the same from time to time when such tax became delinquent. He The county treasurer shall execute to such person a certificate for such parcel, which may be substantially in the following form:

"I, ..., the treasurer of the county of ....., state of Montana, do hereby certify that at the sale of lands pursuant to the tax assessment for the year 19.. in the county of .... and which sale was held on the .... day of ....., 19.., for the purpose of liquidating said assessment, the following described parcel of land, situate in said the county of ....., state of Montana, to wit: (insert description) was duly offered for sale; that there was no purchaser in good faith for the same as provided by law and no person or purchaser offered to take the same and pay the taxes, cost, and charges due as aforesaid. Accordingly, the whole amount of the property assessed and described as above was struck off to the county of .... as purchaser thereof for the sum of ....., and the same still remaining unredeemed, and on this day .... having paid into the treasury of said such county the amount for which the same was bid in, together with all subsequent delinquent taxes, penalties, costs, and interest amounting in all to .... dollars;

Now, therefore, in consideration thereof and pursuant to the statute in such case made and provided, I do hereby assign and set over all the right, title, and interest of the county of ....., state of Montana, acquired in said such lands under and by virtue of said the sale to the said ....., his heirs and assigns forever, together with all the rights, powers, and privileges of the said county of .... to take steps to receive a deed thereof or receive payment in case of a redemption; subject, however, to redemption as provided by law.

Witness my hand and official seal of office this .... day of ....., 19...

..... (County Treasurer)"

(2) In case If the certificate hereinabove described in subsection (1) shall by accident become becomes lost by accident or destroyed by the assignee, then in such an event the county treasurer shall issue a duplicate certificate to the assignee after the said county treasurer is convinced that the certificate has been lost or destroyed and after the assignee has made an affidavit to that effect.

(3) The provisions of this section shall apply to any sales sale of land for which a treasurer's deed shall was not issued by March 5, 1917, have actually issued

~~regardless of whether the sale shall have been made at any date heretofore, as well as to future sales for recovery of taxes,~~ and the holder of any ~~such~~ certificate ~~shall therefore have~~ described in subsection (1) has the same rights, powers, and privileges with regard to securing a deed as any purchaser of ~~lands~~ land at tax sale may now have.

(4) As to any ~~lands~~ land received by the county in exchange, the same may be sold or leased the same as might have been done with the lands exchanged."

Section 11. Section 15-18-305, MCA, is amended to read:

"15-18-305. Defense to action -- redemption of parcels. Any defendant may appear in the action within the time provided by law for appearances in civil actions, may set up any defense to the action he may have, and may therein question the legality, validity, or the sufficiency of any act had in connection with the assessment or sale of the land. Any defendant to the action may make redemption of the lands from the tax sale by paying the total amount of delinquent taxes and penalties which plaintiff has paid, with interest thereon at 8% a year from date of payment, together with costs of the action. Upon such payment, a certificate of redemption ~~shall~~ must be issued by the county treasurer to the defendant so paying, and thereupon the

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action ~~shall~~ must be dismissed. Whenever a defendant desires to redeem from a tax sale and pay all subsequent taxes upon any lot, piece, or parcel of real estate which a person ~~such~~ defendant owns or holds a mortgage or other lien against or has any interest in, the county treasurer of the county in which such real estate is situated shall permit such redemption and payment. In case the real estate has been assessed against any other property and is a lien thereon, then the county treasurer shall compute and apportion the tax that should have properly been assessed against the real estate sought to be redeemed and upon which the taxes are sought to be paid, the same as if the property had been separately assessed. Any personal property tax which is a lien upon such real estate ~~shall~~ must be likewise computed and apportioned on the same percentage basis as the tax assessed against the real estate is apportioned."

Section 12. Section 15-23-806, MCA, is amended to read:

"15-23-806. Lien of tax. The tax or penalty on gross proceeds is a lien upon the mine from which the metal is extracted and is a prior lien upon all owned or leased personal property and improvements used in extracting the ore or metal. The tax shall be collected in the manner provided ~~under--15-16-101--through---15-16-105,---15-16-503 through--15-16-505,-parts-2,-3,-and-6-of-chapter-16,-parts-1~~

through 3 of chapter 171 and chapter in chapters 1A, 17, and 18 of this title."

Section 13. Section 15-23-807, MCA, is amended to read:

"15-23-807. Assessment and collection procedures. The gross proceeds of metal mines shall be assessed and taxes thereon collected under the provisions of 15-23-101 through 15-23-107."

Section 14. Section 15-24-104, MCA, is amended to read:

"15-24-104. Situs in state of proportionally registered fleets. (1) For the purposes of this section part, all vehicles any vehicle previously registered or which registration has been applied for had application for registration made under the provisions of 61-3-711 through 61-3-733 are is hereby declared to have a situs in the state for the purposes of taxation.

(2) The department or its designated agent shall collect the personal property taxes prescribed herein."

Section 15. Section 15-24-202, MCA, is amended to read:

"15-24-202. Tax-paid sticker -- display required. (1) The owner of a mobile home or housetrailer which is not taxed as an improvement, as improvements are defined in 15-1-101, shall pay the personal property tax in two

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payments, except as provided in 15-24-206(2). The first payment is due within 30 days from the date of the notice of taxes due. The second payment is due no later than September 30 of the year in which the property is assessed. The department of revenue shall issue tax-paid stickers to the county treasurers. The treasurers shall issue the stickers to the owners of mobile homes and housetrailers if the taxes are paid in full. An owner shall then display the sticker, which shall must be visible from the exterior of the mobile home or housetrailer. No mobile home movement permit provided for in 15-24-206 may be issued unless the taxes have been paid in full to the county treasurer.

(2) The owner of a housetrailer must display on the back of his housetrailer or in another conspicuous place a property tax paid sticker prescribed by the division of motor vehicles, department of justice. The division shall produce the stickers for each county. The stickers shall contain the identifying number of the county and consecutive numbers starting with the number 1 in each county. The sticker shall be issued by the county treasurer at the time of payment of property taxes. The sticker shall be displayed from 15 days after the due date for personal property taxes of 1 year to the due date for personal property taxes of the next year."

Section 16. Section 15-24-203, MCA, is amended to

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read:

"15-24-203. ~~Housetrailer---tax~~ Tax receipt -- when production required. If stopped on a highway or at a state vehicle weight station by a state highway patrolman or state vehicle weight station attendant, a person transporting a mobilehome or housetrailer must produce, if requested, the property-tax-paid receipt or a duplicate issued by the county treasurer where the vehicle was taxed."

Section 17. Section 15-24-206, MCA, is amended to read:

"15-24-206. Declaration of destination on imported mobile homes -- display -- tax receipt -- exemptions. (1) Whoever brings a mobile home into the state shall immediately upon arrival in the state execute a written declaration, verified under oath, stating the destination of the mobile home and such other information as the department of revenue ~~shall~~ may require and shall deliver the original of the declaration to ~~whoever~~ whomever is on duty at the nearest port of entry station, state vehicle weight station, or such other place and person as the department may prescribe. He shall also immediately upon arrival in the state affix a copy of the declaration to the mobile home at a conspicuous place.

(2) The treasurer shall issue the mobile home movement declaration provided for in this section to a person

required by this section to execute it, in such quantities as he requests to a maximum of 100. The treasurer shall issue such additional quantities of the declaration to a maximum of 100 as the person requests at the discretion of the county treasurer upon receipt from the person of the previously issued declarations properly executed. In any event executed declarations must be delivered to the treasurer within 30 days from their issue.

(3) Whoever moves a mobile home from a point within the state to another point within or without the state shall first:

(a) execute the declaration provided for in subsection (1) of this section, deliver the original of it to the treasurer of the county in which the move originates or to such other person as the department ~~shall~~ may prescribe, and affix a copy of it ~~to~~ in a conspicuous place on the mobile home to be ~~moved at a conspicuous place~~;

(b) obtain from the county treasurer of the county in which the move originates a receipt showing payment in full of property taxes due with respect to that mobile home~~--to the date it is moved~~.

(4) The provisions of subsection (3)(b) ~~of this section shall~~ do not apply whenever a person moves a mobile home:

~~(a)~~ from a point without to a point within the state;

(b) between places of business of dealers within or without the state;

(c) from the place of business of a dealer to a point within or without the state."

Section 18. Section 15-24-302, MCA, is amended to read:

"15-24-302. Collection procedure. All property mentioned in ~~[the preceding section]~~ 15-24-301 ~~shall be~~ is assessed at the same value as property of like kind and character, and the assessment, levy, and collection of the tax ~~shall be~~ is governed by the provisions of 15-8-408; 15-16-111 through 15-16-115; 15-16-404; chapter 17, part 9; and 15-24-202(1); as amended, except livestock taxation which is governed by part 9 of this chapter, 81-7-104, and Title 81, chapter 7, part 2."

Section 19. Section 15-24-1001, MCA, is amended to read:

"15-24-1001. Custom combiner's tax -- collection -- distribution -- not transferable. (1) In lieu of the taxes required by 15-24-301, motor vehicle license fees and gross vehicle weight fees, overwidth and overheight permits, Title 61, a nonresident engaged in the business of custom combining who brings equipment into the state shall pay a fee of $40 per unit for a period beginning July 1 and ending October 31. A unit shall include:

(a) one truck suitable for hauling grain;

(b) one header trailer or one combine trailer; and

(c) pickup trucks and all other equipment, except combines, used by a nonresident and brought into the state as part of his business of custom combining.

(2) The fee required by this section ~~shall~~ must be collected by the department of highways. Upon payment of the fee, the department of highways ~~shall~~ must provide an identifying device to be displayed on each truck, header trailer, or combine trailer and other equipment used by the nonresident in his business of custom combining in the state, which device ~~shall be~~ is valid for a period beginning July 1 and ending October 31.

(3) All fees collected under this section ~~shall~~ must be distributed not later than December 1 immediately following the period of license as follows: 62 1/2% to the county general fund in the county in which the permittee declares the greatest amount of time will be spent to operate, 37 1/2% to the earmarked revenue fund for the department of highways.

(4) The identifying devices and fee paid for each unit ~~shall~~ is not be transferable from one vehicle to another or transferable on the sale or change of ownership.

(5) Any owner or operator of any equipment included in the unit definition in subsection ~~(2)~~ (1) of this section

who violates any provision of this section is guilty of a misdemeanor and ~~shall--be-punished~~ punishable by a fine of not more than $300 or by a sentence of not more than 60 days in the county jail, or both."

Section 20. Section 15-30-201, MCA, is amended to read:

"15-30-201. Definitions. When used in 15-30-201 through 15-30-209, the following definitions apply:

(1) "Agricultural labor" includes all services performed on a farm or ranch in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) "Employee" includes an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision thereof or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

(3) "Employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person; except that if the person for whom the individual performs or performed the service does not have control of the payment of the wages for such

service, the term "employer" means the person having control of the payment of such wages.

~~(4)--"Payroll--period"--means--a--period--for--which--a payment-of-wages-is-ordinarily-made-to-the-employee--by--his employer.~~

~~(5)~~(4) "Wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash, except that such term shall not include remuneration paid:

(a) for active service as a member of the armed forces of the United States;

(b) for agricultural labor as defined in subsection (1);

(c) for domestic service in a private home, a local college club, or local chapter of a college fraternity or sorority;

(d) for casual labor not in the course of the employer's trade or business performed in any calendar quarter by an employee unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this subsection ~~(5)~~(4)(d), an individual ~~shall--be-deemed~~ is considered to be regularly employed by an employer during a calendar quarter

only if:

(i) on each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business;

(ii) such individual was regularly employed (as determined under subsection ~~(5)~~(4)(d)(i)) by such employer in the performance of such service during the preceding calendar quarter;

(e) for services by a citizen or resident of the United States for a foreign government or an international organization;

(f) for services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(g) (i) for services performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution; or

(ii) for services performed by an individual in and at the time of the sale of newspapers or magazines to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of

such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service or is entitled to be credited with the unsold newspapers or magazines turned back;

(h) for services not in the course of the employer's trade or business to the extent paid in any medium other than cash when such payments are in the form of lodgings or meals and such services are received by the employee at the request of and for the convenience of the employer;

(i) to or for an employee as a payment for or a contribution toward the cost of any group plan or program which benefits the employee, including but not limited to life insurance, hospitalization insurance for the employee or dependents, and employees' club activities."

Section 21. Section 15-30-221, MCA, is amended to read:

"15-30-221. Withholding on payments to nonresidents -- exception. (1) Every person, firm, corporation, association, partnership, or fiduciary doing business in or having income in the state of Montana, including the state of Montana, its agencies and instrumentalities, counties, cities, towns, school districts, and municipal corporations of every kind, which knowingly makes payments of any kind to any nonresident of the state of Montana for services performed

within the state of Montana other than those ~~described~~ payments excepted in 15-30-201 ~~and 15-30-202 (5) (4)~~ or for casual sales of property, either real or personal, located within the state of Montana, or any prizes or winnings payable from or within the state of Montana or hiring or having a contract with any nonresident of a temporary nature to be carried out within the state of Montana shall deduct from such payment or payments an amount, to be set by the department, not to exceed 3% of such payment which shall be transmitted by him to the department as partial payment of such nonresident's income tax.

(2) Upon finding that reports and information in addition to that now required by law or regulation should be filed in order to insure the collection of Montana state income tax on payment to nonresidents for leases, rentals, or royalties derived from property located within the state of Montana, the department may adopt rules requiring the filing of such reports and information.

(3) If, upon notice to a nonresident taxpayer and hearing, the department finds that withholding should be made on payments to the taxpayer for leases, rentals, or royalties derived from property located within the state of Montana in order to insure the collection of Montana state income tax, it may order withholding on such payments in an amount equal to the tax liability of the nonresident

taxpayer. Such order ~~shall be~~ is binding upon all withholding agents, as hereinafter described, who ~~shall~~ receive a copy thereof by mail or otherwise until such agent ~~shall receive~~ receives a copy of an order of the department terminating such withholding as to the nonresident taxpayer.

(4) Payments made for livestock or agricultural products raised or grown outside Montana and sold at a market within this state ~~shall not be~~ are not subject to withholding under this section."

Section 22. Section 15-31-202, MCA, is amended to read:

"15-31-202. Election by small business corporation. (1) Except as provided in subsection (6), any small business corporation may elect, in accordance with the provisions of this section, not to be subject to the taxes imposed by this chapter. Such election shall be valid only if consented to by all persons who are shareholders in such corporation. The election is effective:

(a) on the first day of the first taxable year for which such election is effective, if such election is made on or before such first day; or

(b) on the day on which the election is made, if the election is made after such first day.

(2) If a small business corporation makes an election under subsection (1), then:

(a) with respect to the taxable years of the corporation for which such election is in effect, such corporation ~~shall~~ is not be subject to the taxes imposed by this chapter and, with respect to such taxable years and all succeeding taxable years, the provisions of this part ~~shall~~ apply to such corporation; and

(b) with respect to the taxable years of a shareholder of such corporation in which or with which the taxable years of the corporation for which such election is in effect end, the provisions of this part ~~shall~~ apply to such shareholder, and with respect to such taxable years and all succeeding taxable years, the provisions of this part ~~shall~~ apply to such shareholder.

(3) An election under subsection (1) may be made by a small business corporation for any taxable year at any time during the first month of such taxable year or at any time during the month preceding such first month. Such election ~~shall~~ must be made in ~~such manner as~~ accordance with rules prescribed by the department of revenue ~~shall prescribe by regulations~~.

(4) An election under subsection (1) ~~shall be~~ is effective for the taxable year of the corporation for which it is made and for all succeeding taxable years of the corporation unless it is terminated, with respect to any such taxable year, under subsection (5).

(5) (a) (i) An election under subsection (1) made by a small business corporation ~~shall terminate~~ terminates if any person who was not a shareholder in such corporation at the time of the initial election under subsection (1) subsequently becomes a shareholder in such corporation and affirmatively refuses ~~in such manner as~~ accordance with rules prescribed by the department ~~shall by rules prescribe~~ to consent to such election on or before the 60th day on which he acquires the stock.

(ii) If the person acquiring the stock is the estate of a decedent, the period under subsection (5)(a)(i) for affirmatively refusing to consent to the election ~~shall expire~~ expires on the 60th day after whichever of the following is the earlier:

(A) the day on which the executor or administrator of the estate qualifies; or

(B) the last day of the taxable year of the corporation, in which the decedent died.

(iii) Any termination of an election under subsection (5)(a)(i) by reason of the affirmative refusal of any person to consent to such election ~~shall be~~ is effective for the taxable year of the corporation in which such person becomes a shareholder in the corporation and for all succeeding taxable years of the corporation.

(b) An election under subsection (1) made by a small

business corporation may be revoked by it for any taxable year after the first taxable year for which the election is effective. An election may be revoked only if all persons who are shareholders in the corporation on the day on which the revocation is made consent to the revocation. A revocation under this paragraph ~~shall be~~ is effective:

(i) for the taxable year in which made, if made before the close of the first month of such taxable year;

(ii) for the taxable year following the taxable year in which made, if made after the close of such first month, and for all succeeding taxable years of the corporation. Such revocation ~~shall~~ must be made in ~~such manner as~~ accordance with rules prescribed by the department ~~shall prescribe by regulations~~.

(c) An election under subsection (1) made by a small business corporation ~~shall terminate~~ terminates if the corporation ceases to meet the definition of a small business corporation at any time after election is effective under subsection (1).

(d) Such termination ~~shall be~~ is effective for the taxable year of the corporation in which the corporation ceases to be a small business corporation and for all succeeding taxable years of the corporation.

(6) If a small business corporation has made an election under subsection (1) and if such election has been

terminated or revoked under subsection (5), such corporation ~~and any successor corporation~~ ~~shall~~ is not be eligible to make an election under subsection (1) for any taxable year prior to its fifth taxable year which begins after the first taxable year for which such termination or revocation is effective unless the department consents to such election.

(7) This election ~~shall~~ is not be effective unless the corporate net income or loss of such electing corporation ~~shall have been~~ is included in the stockholders' adjusted gross income as ~~such is~~ defined in 15-30-111.

(8) Every electing corporation ~~shall be~~ is required to pay the minimum fee of $10 required by ~~[84-1501]~~ 15-31-204."

Section 23. Section 15-31-521, MCA, is amended to read:

"15-31-521. Closing agreements. (1) The director of revenue or any person authorized in writing by him is authorized to enter into an agreement with any person taxpayer relating to the liability of such ~~person~~ taxpayer in respect to the tax imposed by this chapter for any taxable period.

(2) Any such agreement ~~shall be~~ is final and conclusive, and except upon a showing of fraud or malfeasance or misrepresentation of a material fact:

(a) the case may not be reopened as to matters agreed upon or the agreement modified by any officer, employee, or

agent of this state; and

(b) in any suit, action, or proceeding under such agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, the agreement may not be annulled, modified, set aside, or disregarded."

Section 24. Section 15-31-601, MCA, is amended to read:

"15-31-601. Central reporting system for identification of corporations. It shall be is the duty of the department of revenue to establish a central reporting system to assist in the identification of corporations, foreign and domestic, which transact business within the state of Montana and/or are subject to taxation by the state of Montana pursuant to the provisions of [title 84]."

Section 25. Section 15-31-605, MCA, is amended to read:

"15-31-605. List of corporations compiled by department of revenue. The department of revenue shall compile a list of all corporations, foreign and domestic, subject to taxation by the state of Montana under the terms of [title 84] to be filed in the central reporting system. Said the list shall must contain the following information:

(1) the name of the corporation;

(2) the principal office of the corporation;

(3) the name and address of the registered agent of the corporation in Montana;

(4) whether the corporation filed such reports, returns, and other information pursuant to the terms of this chapter."

Section 26. Section 15-32-108, MCA, is amended to read:

"15-32-108. Extension of existing classifications. Any classification of property under the provisions of 15-32-103 section 3, Chapter 548, Laws of 1975, that existed prior to the effective date of this act January 1, 1977, approved by the department of revenue before April 19, 1977, shall continue in effect until December 31, 1982. On January 1, 1983, the taxable percentage of such property shall be determined under chapter 6, part 1, or that part as it may be recodified or amended."

Section 27. Section 15-36-109, MCA, is amended to read:

"15-36-109. Penalty for violations. Any violation violation of any of the provisions of this part shall be deemed is a misdemeanor and shall be punished punishable by a fine of not exceeding $1,000 or by imprisonment in the county jail for not exceeding 6 months or by both such fine and imprisonment."

Section 28. Section 15-51-111, MCA, is amended to

read:

"15-51-111. Procedure to compute tax in absence of statement. If any person fails, neglects, or refuses to file any statement required by 15-51-101 within the time therein required, the department of revenue shall, after such time has expired, proceed to inform itself as best it may regarding the number of KWH produced by such person in this state during such quarter and compute the amount of taxes due to the state from such person for such quarter and add the penalty and interest as required by 15-51-103. The department shall mail to the person required to file a quarterly report and pay such tax a letter setting forth the amount of tax, penalty, and interest due, and the letter ~~shall~~ must further contain a statement that if payment is not made within such time, a lien may be filed. Upon receipt of the letter, the person shall remit to the department the full amount of tax, penalty, and interest within 15 days. The 10% penalty may be waived by the department if reasonable cause for failure and neglect to file the statement required by ~~15-51-113~~ 15-51-101 is provided to the department."

Section 29. Section 15-55-107, MCA, is amended to read:

"15-55-107. Actions to recover delinquent taxes and penalties -- additional taxes. (1) If the taxes and

penalties provided for in this chapter to be paid by the railroad company on the property of such freight line company remain unpaid more than 90 days from the due date, the department shall cause an action to be brought to recover the amount of such delinquent taxes and penalties in the district court of any county within the state of Montana in which service can be had on the railroad company which is liable for the payment of such taxes or penalties or in which the property of such delinquent railroad company can be seized under attachment or garnishment proceedings in the manner prescribed by law.

(2) In the event the state tax appeal board, under its authority to raise or lower the rate of the taxes which would be payable on the cars of such freight line company if taxed upon an ad valorem basis, ~~shall~~ finds, after a hearing as herein provided, ~~find~~ taxes due from any such freight line company in excess of the 5% 5 1/2% of all gross revenue in this state which is required to be paid by the railroad companies, such additional tax as so determined ~~shall be~~ is due and payable by the freight line company upon which the assessment is made, and if such tax ~~shall--remain~~ remains unpaid for more than 90 days after notification of such assessment by the state tax appeal board, the board shall cause an action to be brought to recover the amount of such additional tax in the district court of any county within

the state of Montana in which service can be had on the freight line company liable for the tax or in which the property of such delinquent freight line company can be seized under attachment or garnishment proceedings in the manner prescribed by law."

Section 30. Section 15-70-208, MCA, is amended to read:

"15-70-208. Examination of records. (1) The department of revenue or its authorized representative is hereby empowered to examine the books, papers, records, and equipment of any gasoline distributor or any person dealing in, transporting, or storing gasoline as defined in this part and to investigate the character of the disposition which any person makes of such gasoline in order to ascertain and determine whether all ~~excise~~ license taxes due hereunder are being properly reported and paid. If such books, papers, records, and equipment are not maintained in this state at the time of demand, they ~~shall~~ must be furnished to the department for review or such dealer ~~shall~~ must bear the reasonable cost of examination by an agent authorized or designated by the department at the place where such books or records are kept, ~~,~~ provided However, the taxpayer ~~shall~~ is not be liable for such costs for a period exceeding 1 week or for such longer period as he may consent to in writing unless the result of such examination is the

payment of a tax deficiency.

(2) The records, receipts, and invoices and any other pertinent papers supporting sales of every distributor or any person dealing in, transporting, or storing gasoline ~~shall~~ must be open and subject to inspection by the department or any of its employees or assistants during business hours in order to ascertain the amount of license tax due."

Section 31. Section 20-9-115, MCA, is amended to read:

"20-9-115. Notice of preliminary budget filing and final budget meeting. ~~(1)~~ Between July 10 and July 20 of each year, the clerk of each district shall publish notice one time in the official newspaper of the county stating that the preliminary budget for the district for the school fiscal year just beginning, as prepared and adopted by the trustees, is on file in his office and open to inspection by all taxpayers. The notice shall also state that the trustees will meet at 10 a.m. on the fourth Monday in July for the purpose of considering and adopting the final budget of the district, that the meeting of the trustees may be continued from day to day until the final adoption of the district's budget, and that any taxpayer in the district may appear at such meeting and be heard for or against any part of the budget.

~~(2)--Notice--given--under--this---section---meets---the~~

~~requirement for notice contained in 15 10 203.~~"

NEW SECTION. Section 32. Rulemaking authority. The department of revenue may adopt rules necessary for the taxation of property under ~~[~~chapter 35 of Title 15~~]~~.

Section 33. Codification. Section ~~33~~ 32 is intended to be codified as an integral part of Title 15, chapter 35, and the provisions of Title 15, chapter 35, apply to section ~~33~~ 32.

Section 34. Repealer. Sections 84-510 and 84-6210, R.C.M. 1947, are repealed.

Section 35. Repealer. Sections 15-23-509, 15-24-401, and 15-51-105, MCA, are repealed.

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